



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 174477

PRELIMINARY RECITALS

Pursuant to a petition filed on May 18, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services regarding Medical Assistance (MA), a hearing was held on July 20, 2016, by telephone.

The issue for determination is (1) whether the petitioner's appeal of the Medical Overpayment is timely, and (2) if timely whether the agency correctly established a Medical Overpayment in the amount of \$8,738.98 against the petitioner for the time period of July 1, 2013 to November 30, 2013, April 1, 2014 to February 28, 2015, and June 1, 2015 to August 31, 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On April 1, 2016 the agency sent the petitioner Medical Overpayment Notices stating the following:
 - a. Claim # [REDACTED] – Medical Overpayment in the amount of \$1,053.60 for the period of July 1, 2013 to November 30, 2013.
 - b. Claim # [REDACTED] – Medical Overpayment in the amount of \$5,160.28 for the period of April 1, 2014 to February 28, 2015.
 - c. Claim # [REDACTED] – Medical Overpayment in the amount of \$913.50 for the period of June 1, 2015 to July 31, 2015.
 - d. Claim # [REDACTED] – Medical Overpayment in the amount of \$160.94 for the period of August 1, 2015 to August 31, 2015.
3. Each of the above-listed notices stated that the petitioner could request a fair hearing from the Division of Hearings and Appeals on or before May 16, 2016.
4. On April 4, 2016 the agency sent the petitioner Medical Overpayment Notices stating the following:
 - a. Claim # [REDACTED] – Medical Overpayment in the amount of \$1,096.92 for the period of April 1, 2014 to February 28, 2015.
 - b. Claim # [REDACTED] – Medical Overpayment in the amount of \$353.74 for the period of June 1, 2015 to August 31, 2015.
5. These notices, mailed on April 4, 2016, stated that the petitioner could request a fair hearing from the Division of Hearings and Appeals on or before May 19, 2016.
6. The Division of Hearings and Appeals received the petitioner's Request for Fair Hearing on May 18, 2016.
7. From February 1, 2014 to February 28, 2015 the household's monthly gross income was as follows:
 - a. \$1,247.96 – February 2014
 - b. \$1,247.96 – March 2014
 - c. \$2,741.87 – April 2014
 - d. \$3,103.91 – May 2014
 - e. \$3,053.91 – June 2014
 - f. \$2,503.89 – July 2014
 - g. \$5,565.72 – August 2014
 - h. \$5,005.57 – September 2014
 - i. \$4,667.69 – October 2014
 - j. \$4,665.75 – November 2014
 - k. \$4,450.64 – December 2014
 - l. \$4,564.48 – January 2015
 - m. \$5,648.42 – February 2015

8. The household's reporting limit in February 2014 was \$1,987.50. On February 24, 2014 the agency sent the petitioner a notice stating that if the household's income increased above \$1,987.50, the household had to report the income increase by the 10th day of the following month.
9. From April 1, 2015 to August 31, 2015 the household's monthly gross income was as follows:
 - a. \$3,742.42 – April 2015
 - b. \$7,502.87 – May 2015
 - c. \$7,078.60 – June 2015
 - d. \$6,403.67 – July 2015
 - e. \$8,109.69 – August 2015
10. The household's reporting limit in March 2015 was \$2,020.83. On March 20, 2015 the agency sent the petitioner a notice stating that if the household's income increased above \$2,020.83, the household had to report the income increase by the 10th day of the following month.

DISCUSSION

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5). All negative notices sent by the agency include standard language informing recipients of how to appeal and the time limits for appeal. If the appeal is untimely the Division of Hearings and Appeals does not have jurisdiction to review its merits. There is no "good cause" exception to that time limit.

Four of the six overpayment notices were mailed to the petitioner on April 1, 2016. These notices specifically stated that the petitioner could appeal to the Division of Hearings and Appeals on or before May 16, 2016. The petitioner's appeal is post-marked May 18, 2016. This is the receipt date for the appeal. This is beyond the 45 day time limit to appeal, and thus I am without jurisdiction to address the merits of the Medical Overpayments under the four claim numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

The agency mailed two of the six notices of overpayment to the petitioner on April 4, 2016. The 45 day deadline to appeal these notices was May 19, 2016. The Division of Hearings and Appeals received the petitioner's appeal on May 18, 2016. The petitioner's appeal regarding these overpayments claim numbers [REDACTED] and [REDACTED] is timely.

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person

responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Originally the agency used employer verification forms to calculate and process the overpayments. They did not receive employer verification forms for all of the months. For months where they did not have an employer verification form, they concluded that the petitioner was not eligible for any medical benefits, and calculated a 100% overpayment based on all the medical benefits that the household received. A medical overpayment, by definition, only exists when a household receives payments for benefits that they are not eligible to receive. The hearing was started, and then continued at the petitioner's request to a new date. Between these two dates the agency was able to use the state wage match to calculate a more accurate overpayment amount for the months in which they had not received the employer verification of the household's wages.

With respect to overpayment claim number [REDACTED], the agency alleges that the petitioner was overpaid \$1,096.92 for the period of April 1, 2014 to February 28, 2015. This overpayment is incorrect. Using the employer verification in combination with the state wage match records, the agency concluded that the correct overpayment period is August 1, 2014 through February 28, 2015. The household would have been eligible with BC Plus premiums for this time period. The total would have totaled \$440, which is the correct overpayment amount under this claim number.

With respect to overpayment claim number [REDACTED], the agency alleges that \$353.74 for the period of June 1, 2015 to August 31, 2015. This overpayment was based upon the household's actual income. The agency had employer verification for this time period. The overpayment under this claim number is correct. The household exceeded their income reporting requirement in April 2015. They had until May 10, 2015 to report this increase income. They failed to report their income increase. Had they timely reported, they would not have been eligible for BC Plus benefits from June 1, 2015 to August 31, 2015. The total amount of these benefits paid is \$353.74, which is the amount of the overpayment under this claim number.

Although I have no jurisdiction or authority to order the agency to do anything with respect to overpayment claim numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED], I have reviewed these claim numbers. Using a combination of the employer verification, and State Wage Match records for the periods when the employer verifications were unavailable, claim numbers [REDACTED] and [REDACTED] are incorrect. Recalculating claim number [REDACTED] resulted in a reduction from \$1,053.60 to \$381.65. Recalculating claim number [REDACTED] resulted in a reduction from \$5,160.28 to \$4,095.25. Although I cannot order the agency to correct these claims, I urge the agency to make the proper reductions. The remaining claim numbers are correct.

CONCLUSIONS OF LAW

- (1) Although the petitioner's appeal, with respect to overpayment claim numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED], is not timely, her appeal, with respect to overpayment claim numbers [REDACTED] and [REDACTED], is timely.
- (2) The agency incorrectly concluded that the petitioner was overpaid \$1,096.92 for the period of April 1, 2014 to February 28, 2015 under claim number [REDACTED]. The agency correctly determined the overpayment under claim number [REDACTED].

THEREFORE, it is

ORDERED

That this case is remanded back to the agency with instructions to fix the overpayment under claim number [REDACTED]. The correct overpayment should be in the amount of \$440 for the period of August 1, 2014 to February 28, 2015. The agency shall comply with this order within 10 days from the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

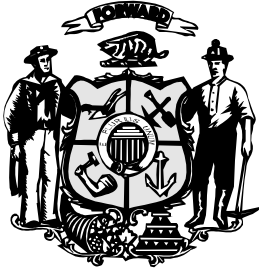
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of August, 2016

Corinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 8, 2016.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability